

GOVERNMENT OF THE DISTRICT OF COLUMBIA
District Department of the Environment



Office of the Director

November 10, 2010

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
jackson.lisa@epa.gov

RE: Securing the Federal Leadership Committee's Role in Assisting the District of Columbia

Dear Administrator Jackson: *Lisa*

I am writing you in your capacity as Chairwoman of the Chesapeake Bay Federal Leadership Committee (FLC) and as Chair of the Chesapeake Bay Executive Council.

The District of Columbia understands that the FLC is the mechanism through which the Federal Government assumes strong leadership for Chesapeake Bay restoration—in keeping with the commitments it made in the May 2010 *Strategy for Protecting and Restoring the Chesapeake Bay Watershed*. Given this substantial interest in the Chesapeake watershed and the Administration's commitment to lead by example, the District of Columbia requests the FLC to play a key role in assisting with critical federal-District relationships.

In particular, we think the FLC can assist the District in implementing both its Chesapeake Bay TMDL WIP and its MS4 Stormwater Permit. DC supports both the TMDL and the WIP process. In fact, our Draft Phase I WIP received positive feedback and only minor backstops from EPA. In early feedback, EPA Region 3 communicated that *"Federal agencies, EPA, and DC should work together to assess contributions of federal facilities as well as potential actions to address loads from these [federal] facilities."*¹ Following this input EPA offered an even stronger requirement for the District to obtain federal commitments: *"Federal Facilities: Some Minor Deficiencies in Gap filling Strategies - EPA will engage the assistance of the other federal partners in the Bay restoration through the Federal Leadership Committee to assist in securing the support needed here."*²

Region 3 goes on to urge DC to take a more definitive approach and identify specific commitments for federal lands such as retrofit and stream restoration that the federal agencies would be committed to implement per the language of the Executive Order Strategy. Unfortunately, the District lacks the capacity to procure federal commitments and the authority to compel them to comply with state (District) directives, for example to install LID measures such as green roofs.

¹ Sept. 24, 2010 Summary: EPA Evaluation of DC Draft Watershed Implementation Plan

² Sept. 28, 2010 EPA Comments on the District of Columbia Draft Phase I Watershed Implementation Plan



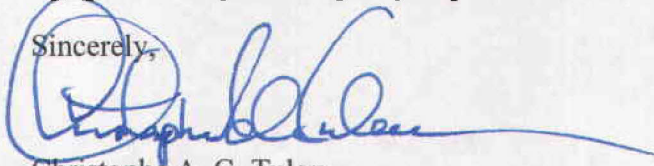
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Our ability to fulfill EPA's robust expectations of us vis-à-vis federal agency actions is further compromised by the United States Government Accountability Office's determination that federal agencies are not required to pay DC's Stormwater Fee—citing the Supremacy Clause of the U.S. Constitution.

We began in late 2008 to approach GSA, Department of Defense, Department of Agriculture and others to discuss options for meeting stormwater objectives—including the retention standard included in the Energy Independence and Security Act (EISA). I am happy to report that this fall the Department of Defense has communicated very openly with us, and we are discussing many options on their facilities located in DC. However for most other Strategy signatory agencies, we can claim little more than open channels of communication. In fact, some agencies are unwilling to cooperate on the grounds that they are not in the Executive Branch, and therefore not federal (for example, the Smithsonian Institution). Even where good intentions are expressed, budget constraints stand in the way of commitments. And yet EPA expects us to garner commitments, not just open dialogue.

So, we need your and the FSC's help to develop a strategy for obtaining federal agency commitments and overcoming the budgetary impediments to action.

Sincerely,



Christophe A. G. Tulou
Acting Director

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